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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SHIRLEY SKOBIN, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B170099 (Los Angeles County Super. Ct. No. LC061274)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard B. Wolfe, Judge. Affirmed in part and reversed in part.

Jeffrey P. Lustman for Plaintiff and Appellant.

Lloyd W. Pellman, County Counsel, Gary N. Miller, Assistant County Counsel, Johanna M. Fontenot, Principal Deputy County Counsel, and Donna Bruce Koch, Senior Deputy County Counsel, for Defendants and Respondents County of Los Angeles, Stephen Hobson, Omar Hazel, Montreal Rodney, and Christy Swanson.

Lewis, Brisbois, Bisgaard & Smith and Matthew S. Pascale for Defendant and Respondent Beverly Healthcare-California, Inc.

Schmid & Voiles and Suzanne De Rosa for Defendant and Respondent Karen Cunningham.

Carroll, Kelly, Trotter, Franzen & McKenna, Robert L. McKenna, David P. Pruett and Samantha N. Lamm for Defendant and Respondent Catholic Healthcare West.

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Following her involuntary detention and involuntary conservatorship, Shirley Skobin sued the County of Los Angeles, a physician, a hospital, a nursing home, and four attorneys (Respondents). The trial court entered a judgment of dismissal upon sustaining Respondents' demurrers. We conclude the facts alleged in the operative pleading are sufficient to state causes of action against the physician and hospital for false imprisonment, medical malpractice, and intentional infliction of emotional distress. Skobin fails to state a cause of action against the County, nursing home, or attorneys. We shall affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

For purposes of considering the sustaining of a demurrer without leave to amend we assume the truth of all well-pleaded facts "but not contentions, deductions, or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We review only the four corners of the complaint and matters that may be judicially noted. (*Thornburn v. Department of Corrections* (1998) 66 Cal.App.4th 1284, 1287-1288.) The following allegations are included in the fourth amended complaint, the operative pleading.

Beverly Healthcare-California, Inc. (Beverly) is a nursing facility. Beverly made a false allegation that Skobin "was attempting to wheel herself out of the facility." Beverly contacted Dr. Karen Cunningham, who then improperly placed Skobin on a Welfare and

Institutions Code[1] section 5150 hold on June 25, 2001. Dr. Cunningham "made up" a diagnosis of dementia. Skobin was unlawfully detained from June 25, 2001 to July 6, 2001 at Northridge Hospital Medical Center (Northridge).[2] After her stay in Northridge, Skobin returned to Beverly. On July 19, 2001, Skobin was again placed on an unlawful involuntary detention. Because of the involuntary detentions, Skobin did not receive proper medical treatment necessary to recover from her prior hip surgery. Improperly placing her in an involuntary conservatorship and depriving her of her due process rights was outrageous conduct.

Dr. Cunningham improperly worked with the Public Guardian's office to petition the court to approve a conservatorship for Skobin. Christy Swanson and her supervisor, Montreal Rodney, filed a petition without contacting Skobin. On July 6, 2001, a petition was filed without Skobin's consent. The petition sought authorization to administer psychotropic medication. Skobin was forcibly medicated.

Omar Hazel and his supervisor Stephen Hobson, deputy public defenders representing Skobin, improperly waived jury trial at the conservatorship hearing and failed to inform Skobin of her right to a jury trial. If the jury trial had not been waived, Skobin would have been found to be competent because it would have been shown that Skobin "did not have the requisite mental state for a conservatorship." Skobin's due process rights were violated because she did not receive a jury trial. Placing Skobin in a psychiatric hold included offensive contacts and unlawful force.

Commissioner David Ziskrout granted the petition to provide a conservatorship for Skobin and she was released from this conservatorship sometime in 2002. "Commissioner Ziskrout did not attempt to have a fair hearing, but rather rubber-stamped a false diagnosis by Karen Cunningham, M.D."

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[1] All further nondesignated statutory citations are to this code.

[2] Catholic Healthcare West does business as Northridge Hospital Medical Center.

The fourth amended complaint asserts causes of action for legal malpractice, false imprisonment, battery, intentional infliction of emotional distress, due process violations, elder abuse, and medical malpractice. The trial court sustained Respondents' demurrers to the fourth amended complaint without leave to amend. This appeal followed.

DISCUSSION

We consider only Skobin's arguments related to her fourth amended complaint. By amending her complaint, Skobin waived her right to appeal any error in the sustaining demurrers to her prior pleadings. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966, fn. 2.) An order sustaining a demurrer is proper only if the allegations of the complaint fail to state a cause of action under any legal theory. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38-39.)

Skobin states in her opening brief on appeal, "[t]here were two separate sequences of incarceration by Cunningham at Northridge Hospital. To make matters worse, during the second sequence, the Public Guardian's Office worked to put Plaintiff on a conservatorship . . . ." We discuss the events prior to the conservatorship separately from the events subsequent to the conservatorship.

I. Detention Prior to the Conservatorship

Skobin alleges that Cunningham failed to investigate and misdiagnosed her as suffering from dementia and improperly placed her on a section 5150 hold which resulted in an involuntary detention. She alleges that she was then transferred to Northridge, where she was unlawfully involuntarily detained without probable cause. She also alleges that the improper placement in a psychiatric hold constituted outrageous conduct, which Respondents knew would lead to emotional distress, and which lead to such emotional distress.

While Skobin's 57 page complaint is not artfully presented, these allegations state causes of action for false imprisonment, medical malpractice, and intentional infliction of

emotional distress.[3] With the exception of Beverly, Respondents do not challenge the adequacy of these allegations to state causes of action. Instead, Respondents argue Skobin is collaterally estopped from arguing the 5150 hold was improper and that there was probable cause to detain Skobin. Northridge contends that it cannot be held liable because the allegations in the complaint show neither that Cunningham was an employee of Northridge nor that Northridge participated in the decision to involuntarily detain Skobin.

A. Collateral Estoppel

Cunningham, Northridge, and Beverly argue that the doctrine of collateral estoppel precludes Skobin from litigating the propriety of the section 5150 hold. According to them, the identical issues were litigated in the conservatorship proceeding, one element of collateral estoppel. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 848-849.)

Based on the four corners of the complaint, it is impossible to determine exactly what was decided in the conservatorship proceeding. The complaint indicates that "Commissioner Ziskrout did not attempt to have a fair hearing, but rather rubber-stamped a false diagnosis by Karen Cunningham, M.D." From this allegation Cunningham infers that "(1) Dr. Cunningham's testimony with respect to the dementia diagnosis was credible; (2) the dementia diagnosis was valid; thus, (3) probable cause existed for the

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[3] The elements of false imprisonment are "the nonconsensual, intentional confinement of a person without lawful privilege, for an appreciable length of time, however short." (*Molko v. Holy Spirit Assn.* (1998) 46 Cal.3d 1092, 1123.) The elements of a cause of action for medical malpractice are: "'"(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." [Citations.]'" *Galvez v. Frields* (2001) 88 Cal.App.4th 1410, 1420, quoting *Budd v. Nixen* (1971) 6 Cal.3d 195, 200.) The elements of a cause of action for intentional infliction of emotional distress are: (1) extreme or outrageous conduct engaged in with the intent of causing, or reckless disregard of the probability of causing, emotional distress; (2) severe emotional distress; and (3) causation. (*Christiensen v. Superior Court* (1991) 54 Cal.3d 868, 903.)

prior LPSA [Lanterman Petris Short Act] holds placed on plaintiff by Dr. Cunningham." Beverly and Northridge rely on similar inferences.

The allegation that Commissioner Ziskrout "rubber-stamped a false diagnosis" is not equivalent to litigating a claim of an improper section 5150 hold. Under section 5150, a person may be involuntarily detained for 72 hours if there is probable cause to believe that "as a result of mental disorder, [the person] is a danger to others, or to himself or herself, or gravely disabled . . . ." Probable cause is determined at the time of the detention. (*People v. Triplett* (1983) 144 Cal.App.3d 283, 287-288.) Assuming that Commissioner Ziskrout found that Skobin suffered from dementia at the time of the conservatorship proceeding, that does not show she suffered from dementia at the time of the 5150 determination. The conservatorship proceeding was subsequent to the 5150 determination. There is no indication in the complaint that Skobin's mental state when she was placed on the section 5150 hold was litigated in the conservatorhsip proceeding. Nor is there any indication that whether Skobin was gravely disabled, i.e. whether she was unable to provide for her clothing, shelter, and food, was actually litigated in the conservatorship proceeding. (§ 5008, subd. (h).)

Beverly states, without citation to authority that if probable cause for a 14 day hold is found "that determination establishes the initial hold was proper." The same logic inevitably would lead to the conclusion that the release of Skobin from the conservatorship invalidates the prior detentions. That reasoning assumes, incorrectly, that a person's mental state is unchanging. (See *Turner v. Superior Court* (2003) 105 Cal.App.4th 1046, 1059, fn. 3.) Just as there is no indication from the complaint that the release of Skobin from the conservatorship invalidates the determination that the conservatorship was necessary, there is no indication that the placement of Skobin in a conservatorship validates the initial section 5150 hold.

B. Probable Cause

Cunningham contends that her demurrer should be sustained because there was probable cause to impose the section 5150 hold. If her contention were accurate, she would be immune from liability. Section 5278 provides: "Individuals authorized under

this part to detain a person for 72-hour treatment and evaluation . . . shall not be held either criminally or civilly liable for exercising this authority in accordance with the law." A 5150 hold is "in accordance with the law" if there is probable cause to find the person "as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled . . . ." (*Jacobs v. Grossmont Hospital* (2003) 108 Cal.App.4th 69, 76.) Northridge similarly argues that it is immune from liability under section 5278.

Whether there was probable cause to find that when Skobin was placed on the section 5150 involuntary hold, as a result of a mental disorder Skobin was a gravely disabled adult, is impossible to determine from the four corners of the complaint. It requires consideration of the evidence and cannot be established in the context of this case on demurrer.

C. The Allegations Against Beverly

Beverly states that the allegation that it made an untrue allegation that Skobin was attempting to wheel herself out of the facility is insufficient to support any of the causes of action alleged. We agree.

The one possible cause of action this allegation could support is one for intentionally giving a false statement. Section 5150 provides: "If the probable cause is based on the statement of a person other than the officer, member of the attending staff, or professional person, such person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false." The elements of this cause of action are not alleged because there is no claim that the probable cause was based on the alleged untrue statement that she was attempting to wheel herself out of the facility. To the contrary, Skobin specifically alleges that the probable cause was based on Dr. Cunningham's alleged false diagnosis of dementia. Therefore, Skobin fails to state a cause of action against Beverly.

D. Northridge's Claim That It Did Not Participate In The Decision To Detain Skobin

According to the operative pleading, Dr. Cunningham had privileges at Northridge. Northridge argues that, in light of Dr. Cunningham's application, it was required to commit Skobin. It claims it was merely following orders of a physician with staff privileges.

This argument ignores section 5151 which provides in pertinent part: "Prior to admitting a person to the facility for 72-hour treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention. [¶] If in the judgment of the professional person in charge of the facility providing evaluation and treatment, or his or her designee, the person can be properly served without being detained, he or she shall be provided evaluation, crisis intervention, or other impatient or outpatient services on a voluntary basis."

To commit Skobin at Northridge one of the following was required by section 5151: (1) Cunningham had to be designated to assess Skobin, or (2) the professional person in charge of Northridge had to assess Skobin, or (3) the designee of the professional person in charge of Northridge had to assess Skobin. Therefore, Northridge has not shown that Skobin cannot state a cause of action against it because Dr. Cunningham had only staff privileges at Northridge.

II. Detention Subsequent to the Conservatorship

Most of Skobin's allegations concern misconduct with respect to the conservatorship proceeding and the involuntary detention that resulted. As described above, she alleges that the conservatorship was based on the court's rubber stamping of Cunningham's diagnosis. These allegations do not support any cause of action against Cunningham, Northridge, or Beverly. After the petition was granted, the detention was under the authority of the court. (Cf. *Novoa v. Ventura County* (1982) 133 Cal.App.3d 137, 142 [holding that a cause of action for false imprisonment could not be asserted

where the detention of children under Welf. & Inst. Code § 600 was under the color of legal authority].)

Nor is Skobin able to assert a cause of action against the attorneys. She appears to argue that Montreal Rodney and Christy Swanson maliciously petitioned the court for a conservatorship. Government Code section 821.6 provides immunity for such conduct: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." Skobin also appears to argue that the deputy public defenders Stephen Hobson and Omar Hazel committed legal malpractice because they did not inform her of her right to a jury trial and improperly waived a jury trial. In a civil proceeding, an attorney has "'complete charge and supervision' to waive a jury." (*People v. Otis* (1999) 70 Cal.App.4th 1174, 1176.) Thus a waiver, even over the litigant's objection is valid. (*Id.* at p. 1177.) In addition, no well-pleaded fact shows that Skobin suffered damage from the court trial; the only allegation is her conclusion that the outcome would have differed. (See *Furia v. Helm* (2003) 111 Cal.App.4th 945, 953-954 [causation is element of legal malpractice].)

It appears that Skobin's only basis for liability against the County of Los Angeles is derivative. As discussed above she alleges causes of action against the attorneys who petitioned the court and who defended her in the conservatorship proceeding. Because she fails to state a cause of action against any of the attorneys employed by the County, the County cannot be derivatively liable.

III. Conclusion

Because Skobin asserted viable causes of action for false imprisonment, medical malpractice, and intentional infliction of emotional distress with respect to the initial detention under section 5150, the trial court erred in granting Northridge and Cunningham's demurrers to the fourth amended complaint.

The trial court correctly granted the demurrers of Beverly, the County of Los Angeles, Hobson, Hazel, Rodney, and Swanson. The trial court correctly found that none of the other alleged causes of action are supported by well pleaded facts for reasons

explained above. In addition no *factual allegations* support the causes of action for battery or elder abuse. The complaint contains only Skobin's bare conclusion that unlawful force was used.

DISPOSITION

The judgment is affirmed in part and reversed in part. The dismissal of Cunningham and Northridge is reversed. The dismissal of Beverly, Hobson, Hazel, Rodney, Swanson, and the County of Los Angeles is affirmed. Each party to bear his, her, or its own costs.

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COOPER, P.J.

We concur:

RUBIN, J.

FLIER, J.